

No. 13-1050 RC

¹ All statutory references are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted. Similar default provisions also appear in §§ 536.063(6), 536.067(5), and 621.045(6), all of which are applicable to contested cases brought before this Commission.

the Board filed a motion for reconsideration of our order. Thomas did not respond to the motion for reconsideration, nor did she respond to the complaint or motion for default.

Analysis

The Board's complaint alleged Thomas' renewal of her license for the 2012-2014 renewal period was based on a mistake of fact uncovered in a random audit in which Thomas was requested to submit copies of all continuing education course completion certificates for the 2010-2012 renewal period by October 30, 2012. The records produced by Thomas in response to the audit established she had documentation to support only 18 of the 24 credits claimed on her application for renewal. The Board further alleged Thomas procured her license renewal by fraud, deception, misrepresentation, or bribery; that her conduct showed incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty; that she violated her duty of professional trust; and that she is subject to discipline under § 334.920.2. We concluded that the complaint was not properly pled because neither the complaint nor exhibits attached established the date of Thomas' licensure, preventing us from determining whether Thomas was subject to the continuing education requirements or exempt as a new licensee, as provided in 20 CSR 2255-4.010(1).

The Board argues that its complaint was properly pled, and that rather than an omission in its pleading, it was incumbent upon the licensee to raise the exemption as an affirmative defense, citing *Ressler v. Clay County*, 375 S.W.3d 132, 140 (Mo. App. W.D. 2012). On reconsideration, we find the Board's point is well taken. Our review of *Ressler* and other cases cited in its motion persuades us that the continuing education exemption for new licensees under 20 CSR 2255-4.010(1) is an affirmative defense which Thomas had the burden to plead and prove. Because Thomas failed to do so, the Board's complaint was sufficient to establish cause for discipline for her failure to meet the continuing education requirement.

Section 621.100 provides in part:

2. When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under this section and section 536.067 *upon a properly pled writing* filed to initiate the contested case under this chapter or chapter 536, a default decision shall be entered against the licensee without further proceedings. The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law. Upon motion stating facts constituting a meritorious defense and for good cause shown, a default decision may be set aside. The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision. "**Good cause**" includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.

(Emphasis added.)

Accordingly, having concluded the complaint was properly pled, we set aside our September 9, 2013 order, and enter a default decision against Thomas, establishing that the Board has cause to discipline her under § 334.920.2. This default decision shall become final and will not be set aside unless Thomas files a motion with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

We cancel the hearing.

SO ORDERED on October 3, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner